

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Norfolk Division

4 -----)
5 UNITED STATES OF AMERICA,)
6 v.) CRIMINAL ACTION NO.
7 CHESAPEAKE REGIONAL MEDICAL)
8 CENTER,)
9 Defendant.)
10 -----)

11 TRANSCRIPT OF PROCEEDINGS
12 (**Status Hearing**)
13 (Conducted via Telephone)

14 Norfolk, Virginia

15 February 6, 2025

16 BEFORE: THE HONORABLE ELIZABETH W. HANES
17 United States District Judge

18
19 APPEARANCES:

20 UNITED STATES ATTORNEY'S OFFICE
21 By: Elizabeth M. Yusi
22 Emily Rebecca Gantt
23 Assistant United States Attorneys
24 Counsel for the United States

25 OBERHEIDEN PC
26 By: William Howard Newman
27 Nick Oberheiden
28 Counsel for the Defendant

1 (Proceedings commenced at 2:11 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Hanes.

4 Madam Clerk, can you call our matter.

5 THE CLERK: Yes, Your Honor.

6 Case number 2:25cr1, United States of America
7 versus Chesapeake Regional Medical Center.

8 Counsel for the government, we have Elizabeth Yusi
9 and Emily Gantt.

10 Ms. Gantt, is the government ready to proceed?

11 MS. GANTT: Yes, we are. Good afternoon, Your
12 Honor.

13 THE COURT: Good afternoon.

14 THE CLERK: And counsel for the defendant, we have
15 William Newman and Nick Oberheiden.

16 Mr. Oberheiden, is the defendant ready to proceed?

17 MR. OBERHEIDEN: Yes.

18 And good afternoon, Your Honor.

19 THE COURT: Good afternoon. Nice to have everyone.
20 Thank you all for being available.

21 I have a couple of pending motions before me, and I
22 have reviewed them. The first motion is the motion to
23 certify the case as complex. I'll start with that. I think
24 it's fairly straightforward.

25 Let me just ask, Ms. Yusi or Ms. Gantt, is there

1 anything you all want to add?

2 MS. GANTT: No, Your Honor, thank you.

3 THE COURT: All right.

4 And, Mr. Oberheiden, anything you want to add?

5 MR. OBERHEIDEN: No. Thank you for asking, Your
6 Honor. No, thank you.

7 THE COURT: Very well.

8 Having reviewed this motion, I agree with the
9 parties that the case should be properly designated as
10 complex given the type of case it is, the amount of
11 discovery, the nature of the prosecution, the pending
12 pretrial motions that will need to be resolved, so I will
13 make that finding and enter the order accordingly this
14 afternoon.

15 I want to clarify one point. I think what you're
16 asking me to do as far as scheduling is to refrain from
17 setting any deadlines until after the motion to dismiss is
18 resolved, but the proposed order suggested that there may be
19 a pretrial motions deadline that needs to be set, and I'm
20 not sure if that's actually the case.

21 What's the government's position on that?

22 MS. GANTT: Yes, Your Honor.

23 We don't plan on filing any pretrial motions. I'm
24 not sure if the defense is filing any additional but given
25 that the current pending one has at least to some part

1 interlocutory appeal, and speedy trial isn't -- this time is
2 excluded anyway while the motion is pending, it didn't seem
3 like we needed a trial date. I'll leave motions deadline up
4 to whether the defense plans anything further.

5 THE COURT: All right.

6 Mr. Oberheiden, what are your views on that?

7 MR. OBERHEIDEN: I fully agree with the government.

8 THE COURT: Do you anticipate that there would be
9 other pretrial motions that I would need to deal with?

10 MR. OBERHEIDEN: At this point, just like Ms. Gantt
11 said, it is unlikely. I can't, you know, confirm given that
12 this is looking a little bit too much into the future and
13 way beyond the motion to dismiss, but at this point I'm not
14 aware of any.

15 THE COURT: All right. I won't, then, set a
16 pretrial motions deadline. I don't see that that would be
17 necessary, and so that will resolve that.

18 Government, you also asked for an extension in ECF
19 until February 25th to respond to the defendant's pending
20 motion to dismiss, that's unopposed, and I see no reason not
21 to grant that, so I will also grant that motion.

22 Are there any other scheduling issues relating to
23 the response that you would anticipate, Mr. Oberheiden?

24 MR. OBERHEIDEN: No.

25 THE COURT: All right. So, then we'll leave the

1 scheduling. We'll make the one change to the government's
2 response to your motion to dismiss, but we'll leave the
3 reply deadline as set by the local rules.

4 All right. Other than that, there was some
5 reference in the motion to certify the case as complex
6 regarding discovery, and I just wanted to touch base on that
7 to see if there are any issues regarding discovery or what
8 the status of discovery currently is.

9 Does the government want to address that?

10 MS. GANTT: Yes, Your Honor.

11 We're basically preparing to produce the discovery
12 that we had in the prosecution of Mr. Perwaiz. That is in
13 progress. It is so voluminous that it is taking some time,
14 but I think in the next couple of weeks. The rest of the
15 voluminous materials we referenced we received from the
16 defendant in the course of this investigation, so they won't
17 be reproduced. So, the bulk of our discovery should be
18 complete in the next a couple of weeks.

19 THE COURT: It sounded like there were two
20 categories of information, discovery from the investigation
21 of the doctor, which his prosecution was in -- when was that
22 completed?

23 MS. GANTT: The trial was in 2020, Your Honor.

24 THE COURT: Okay. And then records that the
25 defendant produced to the government, are there additional

1 discovery materials that you would have that were obtained
2 or created after 2020 that did not come from the defendant?

3 MS. GANTT: I don't think so, Your Honor. We had
4 another investigation regarding another medical facility. I
5 don't know that those would be discoverable in this matter,
6 but we could discuss that internally and with the defense.
7 Other than that, Your Honor, I can't think of any other set
8 of records.

9 THE COURT: Okay. Have you all talked about -- I
10 think your motion referenced both there were some
11 outstanding records that you were awaiting from the
12 defendant, and then there is obviously your production to
13 the defendant. Have you all talked about timing related to
14 those productions?

15 MS. GANTT: We have not, Your Honor.

16 THE COURT: All right. What's the defendant's
17 position on that?

18 MR. OBERHEIDEN: There are indeed, Your Honor, some
19 outstanding items, and I can represent that we will come up
20 with a timeline to the government by the end -- within
21 today, by the end of today. And I don't think that there is
22 much because the majority has been produced, but there were
23 some technical issues, but I represent to the Court that we
24 will address it in writing with the government, including a
25 timeline, today.

1 THE COURT: All right. That's fine.

2 Well, I think it would make sense for you all to
3 meet and confer.

4 MR. OBERHEIDEN: Yes.

5 THE COURT: There is clearly some time to do that,
6 but I don't want there to be -- I want to make sure that
7 everyone is working towards the exchange of the discovery
8 such that if we get into the position where the motion to
9 dismiss has been ruled upon and need to move forward, that
10 we're not at that point then dealing with discovery. So,
11 why don't you all -- I'll give you 14 days just to meet and
12 confer, talk about discovery; whether or not, for example,
13 there needs to be a discovery order or other agreements made
14 relating to discovery, and you can just file a notice
15 regarding the status of those conversations.

16 All right. Anything else from the government you
17 all think we need to address?

18 MS. GANTT: No, Your Honor. Thank you.

19 THE COURT: All right. From the defense?

20 MR. OBERHEIDEN: With respect to the outstanding
21 items or in general?

22 THE COURT: In general.

23 MR. OBERHEIDEN: Yeah. In ECF 12, in the motion to
24 dismiss, we asked -- since we are here discussing schedules,
25 we asked for an evidentiary hearing. Your Honor, is the

1 Court in a position to schedule a hearing at this point
2 already, or is that too early for the motion to dismiss?

3 THE COURT: What I typically do and what I
4 anticipate I would do here is wait until I at least receive
5 the government's response and review that and then determine
6 whether or not I think an evidentiary hearing is necessary,
7 and so I'll proceed in that way. But I won't set a date at
8 this time, but I understand that you've asked for that.

9 MR. OBERHEIDEN: Thank you, Your Honor.

10 And just since it wasn't disclosed in our first, at
11 the initial motion to dismiss, we currently have six experts
12 that are prepared to testify at such a hearing.

13 THE COURT: All right. I don't recall seeing -- I
14 recall the request for an evidentiary hearing, but you don't
15 outline what that testimony would be in your motion; is that
16 right?

17 MR. OBERHEIDEN: That is correct because, to be
18 honest, Your Honor, this is work in progress, but we are now
19 at a point where we do foresee a number of experts to
20 testify, and if Your Honor so wishes, we are happy to
21 outline the testimony perhaps, if Your Honor allows, after
22 receiving the government's response, if that is fair with
23 the Court.

24 THE COURT: That's fine. You'll have an
25 opportunity to reply to their response. I do think it would

1 be helpful for me to understand, you know, to the extent
2 that you're asking for an evidentiary hearing, the basis for
3 why that would be --

4 MR. OBERHEIDEN: Okay.

5 THE COURT: -- helpful or required in this context,
6 and then I don't think you need to in detail outline what
7 evidence you would seek to present, but I do think it would
8 be helpful to understand why, what issues would need to be
9 determined in the evidentiary hearing that are necessary for
10 resolution of the motion.

11 MR. OBERHEIDEN: Very well, Your Honor. Thank you.

12 THE COURT: All right. Very well, then. I thank
13 everyone for your time. I'll enter those associated orders
14 likely later today, and then we'll proceed with the motion
15 to dismiss. So, nice to talk with everyone.

16 We'll stand in recess. Thank you all.

17 MR. OBERHEIDEN: Thank you.

18 (Proceedings concluded at 1:13 p.m.)

19

20 CERTIFICATION

21

22 I certify that the foregoing is a correct transcript
23 from the record of proceedings in the above-entitled matter.
24

25

1 _____/s/_____

2 Jill H. Trail

3 March 5, 2025

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